



Comptroller of the Currency
Administrator of National Banks

2002

SIGNIFICANT LEGAL, LICENSING AND COMMUNITY DEVELOPMENT PRECEDENTS



2002

**Significant Legal, Licensing, and
Community Development Precedents**

Office of the Comptroller of the Currency

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Permissible Activities

General Activities

Branching

- ***Riegle–Neal Act interstate merger.*** Affirming the court below, the U.S. Court of Appeals for the Eighth Circuit held that the OCC’s determination that the merger of a Missouri bank with a Kansas bank complied with Riegle–Neal’s “minimum age” provisions for the merging banks and was entitled to deference. Riegle–Neal allows states to prohibit mergers between in-state and out-of-state banks, which have been in existence for less than five years. Missouri adopted such a law. However, the court agreed with the OCC that the Missouri law did not apply because the surviving bank’s main office was in Kansas. OCC filed an amicus brief. *TeamBank, N.A. v. McClure*, 279 F.3d 614 (8th Circuit 2002).

Consulting and Financial Advice

- ***Credit card registration and notification services.*** A national bank operating subsidiary may engage in credit card registration and notification services. The subsidiary would also provide other services including a price protection service, a referral service for customers to third parties who offer extended warranty programs for various products, a free credit report annually, a newsletter containing consumer credit suggestions, and reimbursement for locksmith services. Conditional Approval No. 535 (June 21, 2002).
- ***Employee benefit, compensation advisory and human resource services.*** A national bank operating subsidiary may provide employee benefit, compensation advisory and related administrative services, and other human resources services to the bank’s business customers and other businesses in the bank’s market area. Corporate Decision No. 2002–2 (January 9, 2002)
- ***Loss notification and credit monitoring services.*** A national bank may provide its customers with credit card loss notification services. This letter also approves, for the first time, providing credit scores, credit reports, and credit monitoring services to customers. It also approves providing customers with access to their Social Security, medical, and motor vehicle records as activities that are incidental to banking. Interpretive Letter No. 944 (August 12, 2002).

Corporate Governance

- ***Reverse stock split.*** Consistent with 12 CFR 7.2000(b) and 7.2023, a national bank in Alabama may elect the corporate governance provisions of Alabama law and complete a reverse stock split in accordance with those provisions. Conditional Approval No. 541 (July 30, 2002).
- ***Share exchange.*** A national bank may effect a share exchange to become a subsidiary of a bank holding company pursuant to 12 USC 215a–2 and 12 CFR 7.2000, by offering most shareholders holding company stock, but providing cash to out-of-state residents, to avoid costs associated with registering its stock under the Securities Act of 1933. Corporate Decision No. 2002–08 (May 15, 2002).

Finder Activities

- ***Automotive roadside assistance programs.*** A national bank may acquire operating subsidiaries that operate and administer automotive roadside assistance programs and that provide credit card registration and notification services. The bank can administer and operate auto roadside assistance programs for third parties as

permissible finder activities; and can administer and operate a separate roadside assistance program, made available to its credit card customers, as an incidental activity that is convenient and useful to the administration and operation of the programs for third parties. Conditional Approval No. 535 (June 21, 2002).

Leasing

- ***Purchase of off-lease equipment.*** National bank may purchase from lessors and resell, as principal, off-lease equipment. Alternatively, it may act as agent for such lessors in selling the equipment. The letter finds that these activities are part of the business of banking and authorized under 12 USC 24(Seventh), 12 USC 24(Tenth), and 12 CFR Part 23. Interpretive Letter No. 953 (December 4, 2002).

Lending

- ***Lending limit for bank premises.*** A national bank may make a loan to an unrelated borrower that exceeds the bank's lending limit when the borrower will use the proceeds to construct a new premises building for the bank. The limitations on loans and investments for bank premises contained in 12 USC 371d take precedence over the general lending limits in 12 USC 84. Interpretive Letter No. 950 (December 18, 2002).
- ***Lending limit pilot program.*** A loan to finance land development or construction, whether secured by the real property or not, does not qualify for the lending limit pilot program in 12 CFR 32.7. Interpretive Letter No. 942 (June 11, 2002).
- ***Offshore operating subsidiary.*** A national bank may establish an offshore operating subsidiary that will facilitate the funding of the bank's domestic mortgage lending operations. The subsidiary's books and records must be maintained in the United States and be accessible to the OCC. Conditional Approval No. 536 (June 21, 2002).

Other Activities

- ***Purchasing and selling transferable state tax credits.*** A national bank is authorized under 12 USC 24(Seventh) to purchase and resell, as principal, transferable state tax credits. This is a financial intermediary activity and therefore part of the business of banking. Interpretive Letter No. 948 (October 23, 2002).

Compliance

- ***Community Reinvestment Act.*** A national bank's contribution to the Louisiana National Guard's Job Challenge Program may be a qualified investment for Community Reinvestment Act (CRA) purposes. The contribution would sponsor a low- or moderate-income local student's participation in the program, a skill-training program that selected students may enter after successful completion of the National Guard's Youth Challenge Program. Such a contribution would have a primary purpose of community development under the CRA rules because it supports a community service targeted to low- and moderate-income individuals, and would benefit the bank's assessment area. OCC Letter (September 11, 2002).
- ***Unfair or deceptive acts or practices.*** In evaluating whether a national bank or its operating subsidiary has engaged in unfair or deceptive acts or practices, the OCC will utilize the legal standards that have been developed under the Federal Trade Commission Act. Potentially unfair or deceptive acts or practices also may raise issues under the Truth in Lending Act, the Equal Credit Opportunity Act, and other laws. National banks and their operating subsidiaries should take affirmative steps to avoid the legal and reputation risks that would ensue from engaging in unfair or deceptive acts or practices. OCC Advisory Letter 2002-3 (March 22, 2002).

Fiduciary Activities

- ***Collective investment trust withdrawals.*** A national bank, as trustee, may allow participant withdrawals from a collective investment fund solely at the bank's discretion, or when a participant becomes ineligible to continue as a participant in the fund. 12 CFR 9.18 does not mandate the frequency of admissions and withdrawals from collective investment funds. OCC Interpretive Letter No. 936 (May 22, 2002).

Preemption

- ***ATM fees.*** Two national banks and a savings and loan association brought suit challenging municipal ordinances prohibiting banks from charging ATM (automated teller machine) fees to non-depositors. After obtaining preliminary injunctive relief from the regulations, the banks obtained permanent injunctive relief from the district court. A panel of the U.S. Court of Appeals for the Ninth Circuit affirmed, holding that, as for national banks, the National Bank Act and the OCC's regulations preempted the ordinances. A rehearing petition filed by the City and County of San Francisco was denied. OCC filed an amicus brief with the Ninth Circuit. *Bank of America, et al. v. City and County of San Francisco*, 309 F. 3d 551 (9th Circuit 2002).
- ***Applicability of state laws to national bank operating subsidiaries.*** The OCC has issued a number of letters addressing the applicability of state laws with respect to activities conducted in national bank operating subsidiaries. These letters confirm that a particular subsidiary of a national bank is subject to the OCC's examination and supervision pursuant to 12 CFR 5.34(e)(3); explain that, under 12 CFR 7.4006, state laws apply to national bank operating subsidiaries to the same extent that those laws apply to the national bank itself; and conclude that state restrictions or conditions, including licensing requirements, do not apply to the national bank operating subsidiary. Letters were issued to appropriate state regulatory authorities (or to the bank or its counsel) with respect to laws in eight states and one city including: Pennsylvania, Michigan, New Hampshire, Connecticut, Rhode Island, Iowa, Louisiana, Maine, and the City of Las Vegas, Nevada.
- ***Contacts from state officials.*** Applicability of state laws to national banks and their operating subsidiaries—and the authority to enforce those laws—raise complex issues of both federal preemption and the statutory authority of the OCC as the supervisor and regulator of national banks. Because of the complexity of these issues, national banks should consult with the OCC if they are contacted by state officials seeking information that may constitute an attempt to exercise visitorial or enforcement powers over the bank. State officials are also encouraged to contact the OCC if they have information indicating that a national bank may be violating federal or applicable state law or if they seek information from a national bank. OCC Advisory Letter 2002–9 (November 25, 2002).
- ***Exportation of interest rates by national bank operating subsidiaries.*** The OCC issued a letter confirming that a national bank operating subsidiary may export interest rates pursuant to 12 USC 85 under the same terms and conditions applicable to its parent national bank. Letter from Julie L. Williams to Costas Avrakatos, Esq., Kirkpatrick & Lockhart. OCC Interpretive Letter 954 (December 16, 2002).
- ***Insurance law under the Gramm–Leach–Bliley Act, Massachusetts.*** The OCC published its opinion that certain provisions of the Massachusetts Consumer Protection Act Relative to the Sale of Insurance by Banks are preempted under insurance preemption standards established by section 104 of the Gramm–Leach–Bliley Act. Specifically, federal law preempts the provisions of Massachusetts law that purport to prohibit: (1) non-licensed bank personnel from referring a prospective customer to a licensed insurance agent or broker except upon an inquiry initiated by the customer; (2) a bank from compensating an employee for such a referral; and (3) a bank from telling a loan applicant that insurance products are available through the bank until the application is approved and, in the case of a loan secured by a mortgage on real property, until after the customer has accepted the bank's written commitment to extend credit. Preemption Determination, *Federal Register*, 67 *Fed. Reg.* 13405 (March 22, 2002). The Massachusetts Insurance Commissioner filed a petition in the First Circuit seeking review of that OCC preemption letter. The court dismissed the petition, holding that the dispute

between the OCC and the commissioner was insufficient to create a justiciable case or controversy and should be deemed to fall outside the scope of the statutory provisions for judicial review. *Bowler v. Hawke*, 320 F.3d 59 (1st Circuit 2003).

- ***Insurance law under the Gramm–Leach–Bliley Act, West Virginia.*** The State of West Virginia and the State Insurance Commissioner filed a petition with the U.S. Court of Appeals for the Fourth Circuit seeking a review of an OCC Preemption Determination opining that certain provisions of the West Virginia Insurance Sales Consumer Protection Act are preempted by the National Bank Act. In an unpublished opinion, a majority of the panel held that the petitioners had standing to bring the suit, that the OCC had implicit authority under the Gramm–Leach–Bliley Act to issue its preemption opinion, and that the statutes were preempted by the National Bank Act. One of the judges dissented on the ground that the petition presented no justiciable case or controversy. Petitioners filed a petition for rehearing, which the OCC was ordered to answer, and which was ultimately denied. *Cline v. Hawke*, 51 Fed. Appx. 392 (4th Circuit 2002).
- ***Mandatory disclosures to credit card holders.*** A U.S. District Court held that the National Bank Act preempts California laws requiring compliance with certain combinations of warnings to credit card holders regarding the possible consequences of paying only the minimum amount each month. OCC filed an amicus brief. *American Bankers Association v. Lockyer*, 239 F. Supp.2d 1000, 2002 WL 31941511 (E.D. Cal. 2002).
- ***Not sufficient funds (NSF) fees.*** A national bank has authority, pursuant to 12 USC 24(Seventh) and 12 CFR 7.4002, to charge NSF fees where the fee resulted, in part, from the bank’s policy of posting checks in order from the highest to the lowest amount. Letter from Julie L. Williams to John D. Wright, Vice President and Assistant General Counsel, Wells Fargo Bank (April 15, 2002).
- ***“On us” check cashing fees.*** A national banks has authority, pursuant to 12 USC 24(Seventh) and 12 CFR 7.4002, to charge fees for the service of cashing checks drawn the bank and payable to non-accountholders of the bank. Letter from Julie L. Williams to John H. Huffstutler, Esq., Associate General Counsel, Bank of America Legal Department (October 8, 2002); and Letter from Julie L. Williams to J. Thomas Cardwell, Esquire, Akerman, Senterfitt & Eidson, P.A. (April 4, 2002).
- ***“On us” check cashing fees.*** National banks may charge a non-accountholder a convenience fee for using a bank teller to cash an “on us” check. An “on us” check is a check drawn on the bank by one of the bank’s customers. The fee is essentially compensating the bank for making cash immediately available to the payee; otherwise the payee would have to wait for the check to clear through the payment system. A U.S. District Court, with which the OCC filed an amicus brief, held that the National Bank Act, specifically 12 USC 24 (Seventh), preempts state law prohibiting the charging of fees for cashing on-us checks. *Bank of America v. Sorrell*, Case No. 1:02 CV 1518 (GET) (N.D. Ga.). Earlier, another U.S. District Court issued a similar ruling as to a Texas state law prohibition on these fees. *Wells Fargo v. James*, Case No. 01–CA–538–JRN (W.D. Tex.), aff’d 321 F.3d 488, 5th Circuit No. 01–51298 (2003). The OCC participated as amicus in that litigation as well.

Securities Activities

Derivatives

- ***Cash-settled options and forwards on equity securities.*** A national bank may engage in cash-settled options and forwards on equity securities if part of the bank’s customer-driven, non-proprietary financial intermediation business and if the bank has in place an appropriate risk management and measurement process for its derivative and hedging activities. OCC Interpretive Letter No. 949 (September 19, 2002).
- ***Electricity derivative and hedging activities.*** A national bank may conduct customer-driven, cash-settled derivatives business based on electricity prices, and related hedging activities, as an extension of its existing energy-related commodities derivatives business, if the OCC is satisfied that it has an appropriate risk

management process for its electricity derivative and hedging activities. OCC Interpretive Letter No. 937 (June 27, 2002).

- ***Edge Corporation's holding of equity securities for hedging.*** OCC's limit on a national bank's holding of equity securities for hedging purposes, to 5 percent of a class of stock of any one issuer, does not include securities held by the bank's Edge corporation subsidiary. OCC Interpretive Letter No. 924 (January 2, 2002).
- ***Foreign branch membership in the London Clearinghouse.*** A national bank, via its London branch, may join the London Clearinghouse as a SwapClear Member to clear interest derivative contracts. OCC Interpretive Letter No. 929 (February 11, 2002).
- ***Hedging risks from bank permissible, customer-driven derivative transactions.*** A national bank with an OCC-approved hedging program may execute cash- and physically settled equity derivative transactions, and use below investment grade bonds to hedge risks arising from permissible derivative transactions done in accordance with the program. A national bank may hedge risks arising from a hedge that remain when a counterparty terminates the underlying hedged transaction. In limited circumstances a national bank may cross-hedge its equity derivatives (i.e., use one security or a basket of securities to hedge the risk arising from a transaction with another, different security, with similar characteristics). OCC Interpretive Letter No. 935 (May 14, 2002).

Technology and Electronic Activities

- ***Advisory services regarding electronic transactional services.*** A national bank operating subsidiary may provide advisory and consulting services to customers who use the bank's electronic retail or wholesale transactional services; the advice would cover hardware, software, and other technologies necessary to use those services. The subsidiary may also provide advisory and consulting services to business customers on the hardware, software, and other technology necessary to enable those customers to process for themselves banking, economic, and financial information. Corporate Decision No. 2002-11 (June 28, 2002)
- ***Computer and telecommunication equipment leasing.*** A national bank operating subsidiary may conduct computer and telecommunication equipment leasing activities, including ancillary activities. The ancillary activities include the acquisition of equipment for lease, delivery and installation of leased equipment, sales of off-lease equipment, other occasional sales of equipment, arranging for maintenance contracts, and certain website development services. Corporate Decision No. 2002-13 (July 31, 2002).

Electronic Commerce

- ***Participation in a stored value payment system.*** A national bank operating subsidiary may invest in a joint venture that will develop and market a stored value system and pursue future opportunities involving stored value. The stored value program will initially focus on payroll distribution for employees without bank accounts, however, the joint venture will also develop and market stored value programs for merchants and others. Conditional Approval No. 568 (December 31, 2002)
- ***Provision of electronic payment initiation products.*** A national bank may expand the activities of a company in which it holds a non-controlling interest so that the bank could use the company's certification authority network system to provide electronic payment initiation products to commercial buyers and sellers. These electronic payment initiation products will allow trading parties with no previous trading relationship to complete on-line purchases or trades and simultaneously arrange for payments through their existing banking relationships. The proposed system is a business-to-bank payment initiation service, not an interbank payment system. Corporate Decision No. 2002-4 (February 18, 2002).

Investments¹

- ***Acquisition of preferred stock of an unaffiliated company.*** A national bank has authority to acquire and hold the preferred stock of an unaffiliated company, pursuant to its authority to discount and negotiate evidences of debt, where the preferred stock is in substance a debt obligation of the issuer. The bank acquired the preferred stock as partial consideration for the disposition of a loan portfolio to the company. The bank's existing holdings represent less than 5 percent of the bank's capital and surplus and are within applicable prudential standards and regulatory limits. OCC Interpretive Letter No. 941 (June 11, 2002).
- ***Convertible bonds.*** A federal branch's purchases of bonds convertible into equity are permissible investments under Part 1 if the bonds are the credit equivalent of investment grade and marketable. A national bank may purchase bonds convertible into equity where it does not exercise the conversion feature. OCC Interpretive Letter No. 930 (March 11, 2002)
- ***Fannie Mae and Freddie Mac perpetual preferred stock.*** A national bank may invest in perpetual preferred stock issued by Fannie Mae and Freddie Mac without limit, subject to safety and soundness considerations. OCC Interpretive Letter No. 931 (March 15, 2002)
- ***Investments in partnership with Native American Nations.*** National bank's community development corporation (CDC) subsidiary may provide financial support and financial services to assist economic development efforts of Native American Nations directed toward low- and moderate-income communities. Specific proposed activities of the CDC include: (1) providing financial literacy services; (2) buying, selling, and leasing real estate, for example, in partnership with local housing authorities; and (3) providing, servicing, and maintaining ATMs and ATM and debit cards. Approval of Bank's Self-Certification (December 20, 2002), "National Bank Community Development Investments 2002 Directory."
- ***Limited interests in private investment funds.*** A national bank may acquire for limited periods of time, limited interests in private investment funds for which it serves as investment manager, as a way to structure its compensation. Because the bank's ownership of limited equity interests in the funds it advises is restricted to a context where the holding is integral to facilitating a recognized bank-permissible activity, such holdings are permissible as an incident to the bank-permissible investment management activities. OCC Interpretive Letter No. 940 (May 24, 2002)
- ***Purchase of shares in CDC subsidiary of affiliated national bank.*** Four affiliated national banks may each purchase shares in an existing community development corporation (CDC) subsidiary that previously had been formed and capitalized by a fifth affiliated national bank. As a result of the new investments, the CDC subsidiary expanded its products and services to the states that the new shareholders served. Approval of Banks' Self-Certifications (January 30, 2002; January 31, 2002; May 9, 2002; and May 9, 2002), "National Bank Community Development Investments 2002 Directory."
- ***Use of new markets tax credits.*** National bank may invest in wholly owned subsidiary that, in turn, makes an investment in a fund that is certified by the U.S. Department of the Treasury as a "community development entity." The fund will provide debt and equity financing for retail, office, commercial, distribution, industrial mixed-use, and community facility projects in targeted low- and moderate-income areas. The fund is anticipated to earn federal new markets tax credits that will be usable by the bank and other investors. Approval of Bank's Self-Certification (August 28, 2002), "National Bank Community Development Investments 2002 Directory."
- ***Various activities of CDC subsidiary.*** A national bank's community development corporation (CDC) subsidiary may conduct various community and economic development activities that primarily benefit low-

¹ For investments in partnerships, note that subsidiaries of national banks may become general partners, but national banks may not.

and moderate-income individuals, low- and moderate-income areas, or other areas targeted for redevelopment by local, state, federal, or tribal governments. The approved activities of the CDC include:

- 1) providing financing to a corporation that owns and operates a charter school, funded by the state, that educates “at-risk” students, who are primarily low- and moderate-income and have exhibited behavioral or drug problems in other schools;
- 2) providing financing at reduced rates to low- and moderate-income families that received subsidies under state and federal government programs for the purchase of their first homes;
- 3) investing in an entity that renovated a commercial building leased to a state government agency that provides training to unemployed low- and moderate-income individuals and assists them in finding employment;
- 4) financing the education of a medical student who had committed to work after graduation for a facility that provides medical services to low-income families;
- 5) providing working capital for a convenience and hardware store in a low- and moderate-income community; and
- 6) investing in a fund that provides financing for developing and operating affordable housing and is anticipated to earn federal low-income housing tax credits that will be usable by the bank.

Approval of Bank’s Prior Approval Requests and Self-Certifications (April 16, 2002; May 3, 2002; May 3, 2002; July 18, 2002; September 23, 2002; and September 23, 2002), “National Bank Community Development Investments 2002 Directory.”

Enforcement Actions

- ***Dismissal of Bivens suit for damages against OCC officials.*** A U.S. District Court dismissed a suit brought by the former owner and COB of a closed national bank against nine OCC officials, including the Comptroller, arising from the supervision and ultimate closure of a troubled national bank. The dismissal was based on the court’s determination that OCC examiners enjoy absolute immunity from suit. On appeal, a panel of the U.S. Court of Appeals for the Eighth Circuit upheld the dismissal, but on the ground that Bivens actions cannot be brought in the first place against OCC employees performing bank regulatory and supervisory functions. *Sinclair v. Hawke*, ___ F.3d ___, 2003 WL 23150 (8th Circuit 2003)
- ***OCC and foreign bank regulator cooperate in investigation.*** In January 2002, the OCC and the bank’s home-country regulator assessed separate civil money penalties of \$10 million each against the bank and its federal branches in New York City. After a lengthy investigation, the OCC, with the cooperation of the home-country regulator, uncovered a series of questionable transactions at the branch, extending back several years, that resulted in significant losses to the New York branch and included several that showed preferential treatment to certain customers of the New York branch who had personal relationships with some members of the New York branch’s prior management. The OCC issued a cease and desist order, by consent, which required the bank’s federal branches to: develop procedures to guard against fraud; provide for adequate customer due diligence, using an independent third party to verify compliance; and cease doing business with 34 specific individuals and companies, and affiliated entities. The consent order also requires the federal branches to take numerous other actions to strengthen the bank’s internal anti-fraud protections. In August, September and October, the OCC issued enforcement actions against six individuals affiliated with the federal branch located in New York City. The individual enforcement actions included four prohibition actions, two personal cease-and-desist orders and four civil money penalties. In the Matter of Bank of China, and various, Enforcement Actions Nos. 2002–1 (January 17, 2002), 2002–122 (August 23, 2002), 2002–116 (September 3, 2002), 2002–117 (September 3, 2002), 2002–115 (September 23, 2002), 2002–118 (October 31, 2002), 2002–119 (October 31, 2002).

- ***Orderly resolution of a federal branch of an Argentinean bank.*** On March 11, 2002, the OCC issued a consent cease-and-desist order against the New York City branch of an Argentinean bank. The viability of this federal branch was threatened in early 2002 by the Argentinean financial crisis, during which the Argentine government had frozen all payments by banks doing business in Argentina. Although the New York branch of the bank was not directly affected by that order, its ability to receive funds transfers from its head office was severely impaired. The order issued by the OCC required the branch to marshal its assets, improve its liquidity and seek to restructure its third-party liabilities or, alternatively, to carry out a contingency plan to wind down its affairs and carry out an orderly liquidation. The branch and its head office complied with the order and engaged in successful negotiations to restructure its liabilities. The branch repaid its creditors or transferred liabilities to the head office, with the agreement of the creditors. The liquidation was subsequently completed and the federal branch closed on January 30, 2003. The OCC was able to achieve an orderly resolution of the branch and avert the possibility the branch may have been forced to default on its obligations as a result of the crisis in Argentina. In the Matter of Banco de Galicia y Buenos Aires, S.A., Enforcement Action No. 2002–24 (March 11, 2002).
- ***Payday lending.*** In October 2002, the OCC issued cease-and-desist orders and assessed civil money penalties of \$325,000 by consent to a payday lending company and a national bank. The company agreed to terminate its payday lending activities through the bank and to cease providing services to any other national bank without the prior approval of the OCC. The OCC took the actions based on the company's failure to safeguard 641 customer loan files, in violation of several laws and regulations. Both the company and the bank engaged in numerous unsafe or unsound practices in their payday lending activities as well, including excessive credit exceptions. The bank agreed to terminate its business with the company, to conduct a thorough review of its loan files and contact any customer whose file was lost. In the Matter of ACE Cash Express, Inc., Enforcement Action 2002–92 (October 25, 2002). In the Matter of Goleta National Bank, Enforcement Actions Nos. 2002–93 (October 28, 2002), 2002–110 (October 30, 2002).
- ***Recapitalization and revamping strategic plan of failing bank.*** On September 4, 2002, the OCC issued a prompt corrective action directive to a bank that became critically undercapitalized as a result of the numerous loan losses. Among other things, the OCC's directive required immediate recapitalization of the bank, submission of viable strategic plans, and placed several restrictions on the bank's use of brokered deposits. The bank subsequently recapitalized and committed to address its deficiencies. In the Matter of First National Bank of Northern Kentucky, Enforcement Action No. 2002–90 (September 4, 2002).
- ***Unfair or deceptive acts and practices.*** A national bank signed a formal agreement that required the bank to correct certain credit card marketing practices that the OCC identified as deceptive in violation of section 5 of the Federal Trade Commission Act. The OCC charged that, among other deceptive practices, the bank failed to adequately disclose to consumers that they were highly likely to receive accounts with substantially less initial available credit than implied by the advertised range of credit lines, in violation of the Act. Agreement By and Between First National Bank, Fort Pierre, South Dakota, and the Office of the Comptroller of the Currency, Enforcement Action No. 2002–61 (July 18, 2002).

Regulations

- ***Capital equivalency deposits.*** On June 12, 2002, the OCC adopted a final rule that amended its regulation regarding the capital equivalency deposits (CED) that foreign banks with federal branches or agencies must establish and maintain. The rule revised certain requirements regarding CED deposit arrangements to increase flexibility for, and reduce burden on, certain federal branches and agencies, based on a supervisory assessment of the risks presented by the particular institution. 67 Fed. Reg. 41,619 (June 19, 2002).
- ***Capital; Leverage and Risk-Based Capital Guidelines Capital Maintenance: Nonfinancial Equity Investments (Merchant Banking).*** The OCC, FRB, and FDIC issued a joint final rule increasing the capital requirements for certain merchant banking investments. The new requirements affect national banks'

investments in small business investment companies and investments authorized pursuant to the Federal Reserve Board's Regulation K. 67 *Fed. Reg.* 3784 (January 25, 2002).

- **Debt cancellation contracts.** The OCC issued a final rule establishing consumer protection and safety and soundness requirements for debt cancellation contracts and debt suspension agreements. The regulation clarifies that its provisions, and not the federal insurance regulations or state law, governs national banks that provide these products. 67 *Fed. Reg.* 58962 (September 19, 2002).
- **Deposit production offices.** The OCC, the Federal Reserve Board, and the FDIC issued a joint final rule updating their deposit production office regulations to conform with amendments to the statutory definition of "interstate branch" made by section 106 of the Gramm–Leach–Bliley Act. 67 *Fed. Reg.* 38844 (June 6, 2002).
- **Electronic banking.** The OCC issued a final rule revising its rules to facilitate national banks' use of new technologies to conduct business. The rule includes provisions addressing national banks' exercise of their federally authorized powers—including the power to act as finder—through electronic means; the location, for purposes of the national banking laws, of a national bank that engages in activities through electronic means; and the disclosures required when a national bank provides its customers with access to other service providers through hyperlinks in the bank's website or other shared, electronic "space." 67 *Fed. Reg.* 34992 (May 17, 2002).
- **Risk-Based Capital Standards: Claims on Securities Firms.** The OCC, the Federal Reserve Board, the FDIC, and the OTS issued a joint final rule revising the regulatory capital treatment of claims on securities firms. 67 *Fed. Reg.* 16971 (April 9, 2002).

International

- **Parallel bank joint advisory.** On April 23, 2002, the OCC issued a Joint Agency Statement on Parallel-Owned Banking Organizations. The statement, which was issued together with the Federal Reserve Board, the FDIC, and the OTS, discusses the characteristics of parallel-owned banking organizations, reviews potential risks associated with these banking organizations, and sets forth the agencies' approach to supervision of those risks. It also provides information on the licensing process for proposals involving parallel-owned banking organizations. See OCC Bulletin No. 2002–14 (April 23, 2002) (transmitting the Joint Agency Statement).
- **Frequently Asked Questions About the CED Requirements for Federal Branches.** In February 2002, the OCC issued a document responding to the Frequently Asked Questions About the Capital Equivalency Deposit (CED) Requirements for Federal Branches and provided this information to the foreign banks that operate federal branches and agencies in the United States. This document provides detailed information on the CED and how it should be computed and deposited. It also describes two changes that were made to ease the burden on federal branches agencies. First, the administrative burdens of maintaining the CED account were reduced for the low-risk branch and agency operations. Second, the OCC determined that the liabilities of a branch's international banking facility (IBF) should be excluded from the branch's liabilities for purposes of the CED on the basis that the IBF was the equivalent of a separate office of the foreign bank. In addition to sending letters to each foreign bank, the OCC announced these changes in a news release, see NR 2002–16 (March 4, 2002), and amended its rules as necessary to incorporate the new burden reduction initiatives, see 67 *Fed. Reg.* 41619 (June 19, 2002).